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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,853	10/10/2001	Neville J. Anthony	20757Y	7109

210 7590 07/14/2003

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EXAMINER

COLEMAN, BRENDA LIBBY

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 07/14/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,853

Applicant(s)

ANTHONY ET AL.

Examiner

Brenda L. Coleman

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claims 1-36 are pending in the application.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, 21-27 and 30-32, drawn to compounds, compositions and method of use where the compounds of formula I where X, Y, Z¹, Z² and Z³ are such that they form a 1,6-naphthyridine ring, classified in class 546, subclass 123 and class 514, subclass 300.
- II. Claims 1, 4, 25-27 and 30-32, drawn to compounds, compositions and method of use of the compounds of formula I where X, Y, Z¹, Z² and Z³ are such that they form a pyridopyrazine ring, classified in class 544, subclass 350 and class, 514, subclass 249.
- III. Claims 1, 16-21, 25-27 and 30-32, drawn to compounds, compositions and method of use of the compounds of formula I where X, Y, Z¹, Z² and Z³ are such that they form a pyrimido-1,6-naphthyridine ring, classified in class 544, subclass 251 and class, 514, subclass 257.
- IV. Claims 1 and 35-36, drawn to compounds, compositions and method of use of the compounds of formula I where X, Y, Z¹, Z² and Z³ are such that they form a quinoline ring, classified in class 546, subclass 169 and class, 514, subclass 314.

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- V. Claims 28, 29, 33 and 34, drawn to complex compositions where the compounds of formula I are administered in combination with an additional active ingredient, classified in class 514, various subclasses within.
- VI. Claims 1, 25-27 and 30-32, drawn to compounds, compositions and method of use of the compounds of formula I where X, Y, Z¹, Z² and Z³ are such that they form a ring not positively described above, classified in classes 544 and 546, various subclasses within.

The inventions are distinct, each from the other because of the following reasons:

Groups I-VI are directed to structurally dissimilar compounds such that the variable core created by the varying definitions of X, Y, Z¹, Z² and Z³ in formula I do not belong to a recognized class of chemical compounds in the art, and references anticipating one invention, would not render obvious the others, for example 1,6-naphthyridine is different from pyridopyrazine, pyrimido-1,6-naphthyridine, quinoline, etc. Thus, separate searches in the literature as well as in the U.S. Patent Classification System would be required. Each group's compounds are made and used independently of each other and could support separate patents. The compounds differ significantly in chemical structures. One skilled in the art would not consider such diverse structures as functional equivalents of each other. The mere fact that there is a single similarity is not in itself a significant reason to render the whole embodiment obvious.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

If applicants elect Groups V or VI, further restriction may be required.

Tentative election of a single species within the elected group is further required.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 703-305-1880. The examiner can normally be reached on 8:30-5:00 Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on 703-308-4716. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

A handwritten signature in cursive script that reads "Brenda Coleman". The signature is written in dark ink and is positioned above the printed name and title.

Brenda Coleman

Primary Examiner Art Unit 1624

July 11, 2003